The Applicants' undersigned attorney wishes to thank the Examiner for the helpful telephone interview of February 5, 2003 during which the right of an applicant to pursue a broadening reissue application and the limitations imposed by the concept of an improper recapture were both well discussed.

As discussed in the telephone interview, the current claims do not represent recapture.

An applicant is entitled within two years of the issue date of a patent to file a reissue application seeking broader claims than had been originally been granted, provided such additional breadth was originally supported in the specification, and such broader claims were not previously claimed and canceled. This is exactly the present situation.

The method claims originally submitted required entanglement by a whale or other cetacean, followed by a designed failure of the breakaway link. And the granted claim in Applicants' U.S. Patent Number 5,913,670 also recites in the method entangling an animal and subsequent release of the animal.

However, it became apparent to the Applicants that an error had occurred in failing to claim the method of using the breakaway links in an attempt to reduce injury where the breakaway link is made or purchased for practicing the taught invention, but before any entanglement occurs.

Previous method claims submitted by the Applicants required entanglement. The present claims 3-7 do <u>not</u> require entanglement, and thus are broader than the previous method claims, and the present claims were not previously canceled. Therefore, no recapture is present. Present claim 3 does currently mention "entangled" in the preamble, but it is well established that this portion of a claim does not define the scope of the claim.

Everyone who now puts a breakaway link on underwater gear is, either intentionally or unintentionally, practicing the invention earlier taught and now properly claimed.

The present claims are supported in the original U.S. Patent Number at least at column 1, lines 41-43 directed to reducing the possibility of stress or death to the animal; column 1, lines 57-59 regarding the possibility of reducing stress and death to the animal; and column 1, lines 61-63 regarding use of a breakaway link in conjunction with underwater gear, all of which do not recite entanglement.

It is therefore respectfully submitted that the rejection under 35 U.S.C. 251 of claims 3-7 as being an improper recapture is incorrect and should be withdrawn.

Rejection of Claims 3-6 Under 35 U.S.C. 103

The Examiner has rejected claims 3-6 under 35 U.S.C. 103 as being unpatentable over Kahng. The rejection is respectfully traversed.

Kahng is NOT directed to a method for saving whales or other cetaceans as is presently claimed, and since this is the problem being solved, an invention such as that in Kahng directed to salvaging fishing gear (Kahng, column 1, lines 26-30; column 1 line 57-60; and column 3, lines 7-10) would not lead the environmentalist, fisherman or other skilled artisan to the presently claimed invention. Rather, the fisherman practicing the Kahng invention presumably does NOT want the animal (fish) to escape, is not trying to or thinking about the practice of the present invention, and only wants to salvage the fishing gear. In addition, the device of Kahng requires a snap fastener, and/or various metal inserts, attached eyelets, and/or hook member that all teach away from the present invention. In fact, it is

only with impermissible hindsight that Kahng is being viewed at all. It is well-established patent law that hindsight cannot form the basis for a sustainable rejection.

The remarks above with regard to the new and broadened scope of the present claims in this reissue application are also relevant here under 35 U.S.C. 103 and the remarks are therefore incorporated hereby by reference in their entirety.

It is therefore respectfully submitted that the rejection under 35 U.S.C. of claims 3-6 should be withdrawn.

Rejection of Claim 7 Under 35 U.S.C. 103

The Examiner has rejected claim 7 under 35 U.S.C. 103 as being unpatentable over Kahng in view of Collins. The rejection is respectfully traversed.

The remarks above addressing claims 3-6 with regard to Kahng are also relevant here with regard to claim 7 and the remarks are therefore incorporated hereby by reference in their entirety. Since it is submitted above that Kahng is not a proper reference under 35 U.S.C. 103, it is further submitted that a rejection based on a combination with Kahng is also improper and should be withdrawn.

Nevertheless, and maintaining the position that the suggested combination is improper, Applicants respectfully submit that Collins brings nothing new to the art except a floatation device for the purpose of locating fishing gear. This has nothing to do with the presently claimed invention directed to a method for reducing the stress on and death of whales and other cetaceans.

Furthermore, even if one skilled in the art put the Collins floatation device on the Kahng fishing connector, as suggested by the Examiner, nothing in such a combination, short

of impermissible hindsight, would lead that skilled artisan to the presently claimed method for reducing the risk of death to whales or other cetaceans. Kahng teaches nothing about a method for saving whales, and Collins teaches nothing about a method for saving whales.

It is therefore respectfully submitted that the rejection of claim 7 is improper and should be withdrawn.

Applicants' undersigned attorney thanks the Examiner for (a) his statement during the telephone conversation of February 5, 2003, that the Office Action was in error on page 4 by not having a paragraph numbered 8, and by not reciting under Allowable Subject Matter the Applicants' claim 1, and (b) confirming that there was no missing text intended as a paragraph number 9.

In view of the above remarks and the agreement during the telephone interview of February 5, 2003, it is believed that claims 1 and 3-7 are in condition for allowance. Applicants will submit the original Letter Patent in due course.

As this Response is submitted within the shortened statutory period, it is believed that no additional fees are due. In the event that the undersigned is mistaken in his calculations, an appropriate extension of time to respond is most respectfully requested, and the Commissioner is requested to bill the undersigned attorney of record.

Respectfully submitted,

Dennis H. Rainear
Reg. No 32,486
Ethyl Corporation
330 South Fourth Street
Richmond, Virginia 23219
(804) 788-5516

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